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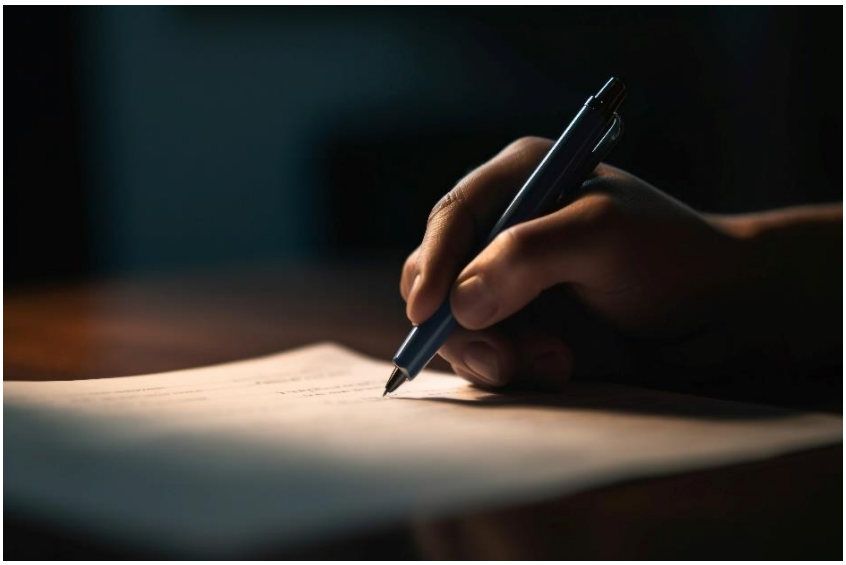
Tax Bulletin

July 2025

Tax

Foreword



This publication contains brief commentary on Circulars, SROs and decisions of the adjudicating authorities issued during June 2025.

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Karachi
July 29, 2025

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Income Tax Ordinance, 2001

A. Notifications:

1. S.R.O. 1216/2025 dated July 8, 2025

Through this notification, FBR has inserted a new clause (9AD) into the Part II of the Second Schedule to the Ordinance. As per the notification, withholding tax under section 148 shall be collected at a reduced rate of 0.25% on the commercial import of white crystalline sugar, upto an aggregate limit of 500,000 metric tons subject to the following conditions:

- Import of sugar must either be carried out by the Trading Corporation of Pakistan through the Commerce Division or by the private sector, provided they adhere to specific conditions, limitations, and quota allotments determined for immediate and future requirements.
- The Commerce Division is responsible for ensuring the quality of imported sugar through inspection by an international inspection firm.
- Importers must complete their imports on or before 30th September 2025 to avail the benefit under this notification.

B. Reported Decisions

1. REGISTRATION AND NOTICES UNDER SECTION 114 OF THE INCOME TAX ORDINANCE, 2001 DO NOT CONSTITUTE COERCIVE ACTION IN THE ABSENCE OF FINAL TAX DETERMINATION

(2025) 131 TAX 676 = 2025 PTD 823

SUPREME COURT OF PAKISTAN
M/S PAYONEER INC. (U.S.-BASED NON-RESIDENT ENTITY)

vs.

FEDERATION OF PAKISTAN

APPLICABLE LAW:

- Sections 114(1), 114(4), and 176 of the Ordinance;
- Double Taxation Avoidance Treaty Pakistan and United State of America

Brief facts

The petitioner, a U.S. incorporated non-resident entity, facilitated home remittance transactions with Mobilink Microfinance Bank, enabling the transfer of funds from overseas customers to beneficiaries in Pakistan. On November 11, 2020, the FBR issued a notice under section 176 of the Ordinance, seeking information regarding the petitioner's tax obligations in relation to offshore digital services. The petitioner responded on December 18, 2020, stating that it neither maintained any physical nor digital presence in Pakistan and merely acted as a facilitator of remittances. Despite petitioner response, the FBR proceeded to register the petitioner for tax purposes and issued a NTN on March 26, 2021, followed by notices under section 114(4) for Tax Years 2019 and 2020. The petitioner, relying on the provisions of the Pakistan-U.S. Double Taxation Treaty and asserting the absence of a permanent establishment in Pakistan, filed Writ Petition No. 1670 of 2021 before the Islamabad High Court, which was dismissed. A leave to appeal against the said order was subsequently filed before the Supreme Court.

Decision

Supreme Court declined leave to appeal and dismissed the petition, thereby upholding the High Court's judgment. The findings of the Court were as follows:

- The registration of the petitioner and / issuance of the NTN under the Ordinance, was held not be a coercive action and did not require prior notice, as it did not itself create any immediate tax liability.
- The petitioner had not exhausted the statutory remedies available under the hierarchy of forums provided in the Ordinance, such as appeal before the Commissioner (Appeals) and the Appellate Tribunal, which barred the invocation of writ jurisdiction. Moreover, the petitioner failed to establish that such remedies were ineffective.

- The petitioner's reliance on the Geofizyka case was found to be misplaced, as that matter involved a tax reference filed after availing the prescribed revenue forums, in contrast to the petitioner's premature invocation of writ jurisdiction against mere show-cause notices.
- The petitioner had directly approached the Supreme Court without first filing an Intra-Court Appeal (ICA) against the order of the Single Bench. This approach was contrary to the principle laid down in Metropole Cinema and Hub Power Co. which allow bypassing the ICA only in exceptional circumstances which are absent in this case.

2. INTER-COMPANY TRANSFERS WITHOUT MONETARY CONSIDERATION DO NOT CONSTITUTE "SALES" UNDER INCOME TAX ORDINANCE, 2001

(2025) 131 TAX 271 = 2025 PTD 753

SUPREME COURT OF PAKISTAN

COMMISSIONER INLAND REVENUE, LAHORE

VERSUS

M/S AZAM TEXTILE MILLS LIMITED, LAHORE

APPLICABLE LAW:

- Sections 122(1), 133(1), 153, 153(6), 153(7)(iii), 169, and 177 of the **Ordinance**;
- Section 4 of the **Sale of Goods Act, 1930**.

Brief Facts

The respondent, a yarn manufacturer, transferred raw materials to its sister concern, M/s Saritow Spinning Mills Ltd., during Tax Year 2003. The taxation officer treated these transactions as "sales" under section 169 of the Ordinance, imposing tax liability accordingly.

Department Arguments

The Petitioner (i.e. the department) argued that the transfer of raw materials between Azam Textile Mills Ltd. and its sister concern, M/s Saritow Spinning Mills Ltd., constituted a "sale" under section 153(6) and (7)(iii) of the Ordinance, and was therefore subject to withholding tax. In support, the department relied on ledger entries and profit and loss statements which, according to it, reflected that the transactions were netted off, indicating the existence of a commercial exchange. It was further contended that, since these transactions were recorded in the financial statements, they were presumptively taxable unless the taxpayer could conclusively establish otherwise.

The department also alleged that the group structure was being misused to disguise actual sales as internal transfers in order to evade tax liability. As an alternative argument, it was submitted that even if the transaction did not qualify as "sales" they were still liable to tax under section 169, being covered under the presumptive tax regime.

Taxpayer Arguments

The taxpayer contended that the transfers of raw materials were internal allocations within the group, made without any cash or credit consideration, and therefore did not constitute a "sale" under the applicable law.

It explained that under a centralized procurement system, raw cotton was purchased in bulk by one entity and subsequently distributed to sister concerns based on operational requirements, without any underlying sale agreement or pricing arrangement. Relying on section 4 of the Sale of Goods Act, 1930, and section 153(7)(iii) of the Ordinance, the taxpayer emphasized that a transaction must involve a monetary price to qualify as a sale.

Accordingly, no taxable event had occurred, and the provision of sections 153 and 169 were inapplicable. It was further submitted that the burden of proving the existence of consideration rested with the department, which had failed to furnish any substantive evidence and had merely proceeded on assumptions.

Decision

The Supreme Court held that:

- A "sale" under the law necessarily requires the presence of monetary consideration, which was not established in the case of the inter-company transfers.

- Mere accounting entries or ledger records, without an underlying transaction involving consideration, do not give rise to a taxable sale.
- The Court found no evidence of tax avoidance and concluded that the department had failed to prove that the transfers were, in substance, disguised sales rather than legitimate internal allocations within group.

3. UNABSORBED DEPRECIATION CAN BE ADJUSTED AGAINST "INCOME FROM OTHER SOURCES"

2025 PTD 853

LAHORE HIGH COURT

COMMISSIONER INLAND REVENUE, ZONE-I, RTO, FAISALABAD

VERSUS

M/S FAISALABAD ELECTRIC SUPPLY COMPANY (FESCO) LTD.

APPLICABLE LAW:

- Sections 56(1), 57(4), 120(1), 122(9), 133 of the Ordinance

Brief facts

The Respondent, FESCO, an electricity distribution company, earned interest income on bank deposits maintained for the purpose of electricity bill collections. The tax department classified this interest income as "Income from Other Sources" and accordingly disallowed the adjustment of unabsorbed depreciation against it.

FESCO challenged the treatment before the Appellate Tribunal Inland Revenue (ATIR), which was decided in its favour. ATIR held that the interest income was incidental to business operations of the company and, therefore, constitute business income and therefore concluded that unabsorbed depreciation could be lawfully adjusted against such income under Sections 56(1) and 57(4) of the Income Tax Ordinance, 2001.

Petitioner's (Tax Department) Arguments:

The department contended that the interest income earned by FESCO on bank deposits arising from electricity bill collections should be classified as "Income from Other Sources" instead of business income. Relying on section 57(1) of the Ordinance, it argued that such income must be taxed separately, without allowing any adjustment against unabsorbed depreciation. It was further contended that since unabsorbed depreciation constitutes a business loss, it cannot be set off against income assessable under a different head. In support of its position, the department cited the case of Khairul Hayat Amin (2000 PTD 363), where interest income lacking a business nexus was held to be separately taxable.

Respondent's (FESCO's) Arguments:

FESCO argued that the interest earned on bank deposits was incidental to its core business of electricity distribution, as the deposits represented collections from customers temporarily held before onward disbursement. It contended that, being statutorily prohibited from engaging in non-electricity related businesses, all income it earned, including interest, was inherently linked to ancillary to its core operations, and therefore constituted business income.

In support, it cited section 56(1) of the Ordinance, which allows business losses, including unabsorbed depreciation, to be set off against any head of income. Additionally, section 57(4) which specifically allow the deduction of unabsorbed depreciation from any income. FESCO distinguished the case of Khairul Hayat Amin on the basis that the assesse in that case lacked any business connection to the interest income, whereas in FESCO's case, the income directly arose from its statutory business functions.

Decision

The LHC held that:

- Income that is incidental to a company's core operations qualifies as business income, even if it is not the company's primary source of revenue.
- Unabsorbed depreciation may be set off against any head of income under sections 56(1) and 57(4) of the Ordinance.
- The precedent of Khairul Hayat Amin is limited to circumstance where the interest income has no nexus with business and is inapplicable where income arises from statutory business functions.

- Accordingly, the Court dismissed the reference, holding that no legal infirmity existed in the Tribunal's decision.

4. SECTION 111 NOTICE MANDATORY BEFORE SECTION 122(9) – AGRICULTURAL INCOME CONSTITUTIONALLY EXEMPT FROM FEDERAL TAX

2025 PTD 936

BALOCHISTAN HIGH COURT

COMMISSIONER INLAND REVENUE ZONE-I, REGIONAL TAX OFFICE, QUETTA

VS

KHALID HUSSAIN AND ANOTHER

APPLICABLE LAW:

- Sections 41, 111, 111(1)(a)-(d), 122(5A), 122(9), 133 of the Ordinance
- Eighteen Amendment (provincial exclusivity over agricultural income) of the Constitution of Pakistan

Brief facts

The respondent, Khalid Hussain, declared agricultural income of Rs. 31,840,200 as exempt under Section 41 of the Ordinance, in his return for Tax Year. The tax department, without issuing the mandatory notice required under section 111 of the Ordinance, directly initiated proceedings under section 122(9) and raised a tax demand of Rs. 10,154,812, on the ground of non-payment of provincial agricultural income tax.

The respondent challenged the proceeding before the ATIR, which ruled in his favour. The ATIR held that omission to issue a notice under section 111 of the Ordinance constitute a procedural defect, and further noted that the respondent had subsequently paid the due agricultural income tax in Balochistan (Challan QA7277 dated 10.05.2023) during the course of appellate proceedings, which cured the defect. The department then filed a reference before the Balochistan High Court.

Decision

BHC held that:

- The department failed to comply with the mandatory procedural requirement by initiating proceedings under section 122(9) of the Ordinance without first issuing a notice under section 111, in violation of the precedent established in Commissioner v. Millat Tractors (2024 SCMR 700).
- Agricultural income, being constitutionally exempt from federal taxation pursuant to the 18th Amendment, falls within exclusive domain of provincial taxation. The respondent's payment of provincial agriculture tax satisfied the proviso to section 111(1) of the Ordinance.
- The respondent had duly declared agricultural income under Code No. 6100 in the return of income, thereby rebutting any allegation of concealment.
- Although the provincial tax was paid during pendency of appellate proceedings, such payment validated the respondent's declared income and rendered the federal tax demand legally unsustainable.

5. ELECTRONIC SERVICE IS VALID AND TIME-BARRED APPEALS CANNOT BE REMANDED

(2025) 131 TAX 471 = 2025 PTD 883

Peshawar High Court

COMMISSIONER OF INLAND REVENUE PESHAWAR ZONE, REGIONAL TAX OFFICE, PESHAWAR

VS

MISS. SHABNAM RIAZ

APPLICABLE LAW:

- Sections 117, 127(5), 133, 161, 218(1)(d), 218(2) of the Ordinance:
- Rule 44(4) and Rule 74 of the Income Tax Rules, 2002:

Brief Facts:

The respondent, Miss Shabnam Riaz, a garment seller, was issued a tax demand of Rs. 2,075,183 by the Inland Revenue Office for alleged withholding tax defaults. The assessment order was served electronically on October 5, 2020. The respondent filed an appeal before the Commissioner

(Appeals) on August 14, 2020, which was dismissed as time-barred, having been filed 40 days after service, exceeding the 30-day limitation under section 127(5)) of the Ordinance. The Appellate Tribunal, however, remanded the matter for a merits-based hearing, disregarding the limitation period. The tax department challenged the ATIR's decision before the Peshawar High Court.

Petitioner's (Tax Department) Arguments:

- The appeal was statutorily time-barred under section 127(5), as it was filed 40 days after the date of electronic service, which was duly confirmed with the Rule 74.
- Electronic service under Section 218(1)(d) is legally recognized and the limitation period begins from the dated of confirmation of electronic delivery (in this case August 5, 2020).
- The Tribunal committed a legal error in remanding a time-barred appeal, contrary to the express provisions of the Ordinance, which do not allow condonation of delay beyond the statutory limit.

Respondent's (Taxpayer's) Arguments:

- The limitation period should commence only upon receipt of an "attested copy" of the order, not from the date of electronic service.
- The Tribunal was within its jurisdiction to remand for a hearing on merits in the interest of justice.

Decision:

The Peshawar High Court held that:

- Electronic service of orders is legally valid under Section 218(1)(d) read with Rule 74, and does not require subsequent delivery of attested copies. The limitation period for filing an appeal begins upon confirmed electronic delivery, which was occurred on August 5, 2020.
- Section 127(5) prescribes a mandatory limitation period for filing appeals. The Tribunal has no power to condone delay beyond this period or revive a time-barred appeal through remand.
- The legislative intent behind Section 218(1)(d) (introduced in 2018) was to modernize the process of service through electronic means, which must be given full legal effect.
- Accordingly, the Court set aside the Tribunal's order, restored the dismissal of the Commissioner (Appeals), and affirmed that appeals filed beyond the statutory limitation period are not maintainable and cannot be heard on merits.

6. CHALLENGING TAX AUDIT NOTICES UNDER CIVIL SUITS ARE BARRED UNDER INCOME TAX ORDINANCE, 2001

2025 PTCL 441 = (2025) 131 TAX 619

SINDH HIGH COURT

M/S. ARY COMMUNICATIONS LIMITED

VERSUS

COMMISSIONER (AUDIT) INLAND REVENUE-III, CTO, KARACHI

APPLICABLE LAW:

- Sections 177 (Audit Notices) and 227 (Bar on Civil Suits) of the Ordinance
- Order VII Rule 11 (Rejection of Plaint) and Order XXXIX (Injunctions) of the Civil Procedure Code (V of 1908):

Brief Facts:

The appellant, M/s. ARY Communications Limited, filed a civil suit to challenging multiple audit notices issued under Section 177 of the Ordinance, for Tax Years 2017 through2021. The suit sought to declare the notices illegal and prayed for an injunction to restrain the tax authorities from proceeding further. The Single Judge, rejected the plaint suo motu under Order VII Rule 11 Civil Procedure Code, holding that:

- The suit was barred by law (Section 227 of the Income Tax Ordinance).
- Audit notices issued under section 177 of the Ordinance do not constitute an actionable cause of action.
- The appellant failed to plead specific mala fides and had not exhausted the statutory remedies available under the Ordinance.

The appellant appealed before SHC, arguing that the Single Judge erred in rejecting the plaint without a trial.

Decision

The Court upheld the rejection of the plaint under Order VII Rule 11 of the CPC, and made the following findings.

Civil suits challenging tax notices are barred by Section 227 of the Ordinance, unless there is a specific and substantiated claim of jurisdictional defect or mala fides.

Audit notices under Section 177 are merely administrative in nature and do not constitute adverse orders. As such, they do not give rise to an enforceable cause of action. The taxpayer is afforded ample opportunity to justify its position during the audit process itself.

In support of its conclusion, the Court relied on Allahdin Steel v. CIR (2018 SCMR 1328), which affirmed that audit proceedings under section 177 are preliminary steps and not adverse determinations, and on Searle IV Solution v. Federation (2018 SCMR 1444), which emphasized that civil court jurisdiction in tax matters is limited to rare cases involving clear illegality or mala fide intent.

The Court also noted that adequate and effective alternative remedies were available under the Ordinance, including responding to the audit notices and pursuing appeals under sections 127 and 129.

Lastly, the Court concluded that the injunction was rightly denied, as there was no prima facie case, irreparable harm, or balance of convenience in favour of restraining the audit.

7. THE 2016 SRO AMENDED RULE 214 TO LIMIT THE APPROVAL'S VALIDITY TO THREE YEARS FROM THE DATE OF THE SRO, UNLESS EARLIER WITHDRAWN. (2025) 131 TAX 673

SUPREME COURT OF PAKISTAN

COMMISSIONER INLAND REVENUE, CORPORATE ZONE, REGIONAL TAX OFFICE, FAISALABAD

VS

M/S NATIONAL PUBLIC WELFARE SOCIETY, JINNAH

APPLICABLE LAW: SECTION 2(36), 100C, 122(5A), 122(9), 237(1) OF THE INCOME TAX ORDINANCE, 2001

RULE 212, 214 AND 217 OF THE INCOME TAX RULES, 2002

Brief Facts

The petitioner (tax department) issued show cause notice under section 122(9) of the Ordinance read with section 122(5A), contending that the taxpayer was not entitled to claim tax credit as approval under section 2(36) had expired in 2010.

The Petitioner relied on the 2016's SRO that introduced a three-year validity period for such approvals. Based on it, the department treated the 2007 approval as no longer valid and passed an amendment order under section 122(5A) of the ordinance.

Being aggrieved the taxpayer filed appeal before CIRA which decided against the taxpayer. Thereafter appeal filed before ATIR.

ATIR vide its order held that the three year validity period introduced by the 2016 SRO could not apply retrospectively to approvals issued prior to the SRO's issuance. Consequently, the approval granted in 2007 would remain valid until three years after the SRO i.e. until August 2019.

Lahore High Court maintained the decision of the ATIR for the same reasons.

Being aggrieved, the department filed petition before SC.

Decision

SC dismissed the petition and held that:

- Rule 214 stipulated that an approval granted under Rule 212 remained in force unless withdrawn under Rule 217.
- There was no express provision in the SRO suggesting it was to apply retrospectively.
- The phrase "subsequent three years" in the amended rule 214 clearly indicated that the new limitation was to apply prospectively.

- It is a settled principle of tax jurisprudence that fiscal imposing new burdens cannot be applied retrospectively unless explicitly stated. Retrospective tax impositions violate the principles of legality and predictability in taxation.
- Accordingly, the approval granted to the taxpayer in 2007 remained valid until August 2019, pursuant to the three years window triggered by the SRO in August 2016. The taxpayer's tax credit claim in Tax Year 2019 was therefore valid and lawful.

8. THE COURT EMPHASIZED A HARMONIOUS INTERPRETATION OF THE ORDINANCE, WHERE SELF-ASSESSMENT AND VOLUNTARY CORRECTION OF ERRORS TAKE PRECEDENCE BEFORE AUDIT

(2025) 131 TAX 553 = 2025 PTD 717

LAHORE HIGH COURT

M/S AL-QADIR SEED CORPORATION (PVT) LTD. THROUGH ITS DIRECTOR

VS

FEDERATION OF PAKISTAN, THROUGH SECRETARY REVENUE DIVISION, ETC.

APPLICABLE LAW: SECTION 114(6), 114(6A), 122, 122(9), 177, 177(1) AND 182(2) OF THE INCOME TAX ORDINANCE, 2001

SECTION 199 OF THE CONSTITUTION OF PAKISTAN, 1973

Brief Facts

The petitioner, a Private Limited Company, filed a nil return of income for the year 2023 with intention to revise the same within 60-day window provided under section 114(6) of the Ordinance, as its audited accounts of petitioner were not finalized.

During this sixty days period, the department issued a notice under section 177(1) of the Ordinance, selecting the case for audit. The petitioner objected, and contended that issuance of impugned notice before the expiry of the revision period under section 114(6) was premature and unlawful. However, the department proceeded to issue a penalty notice under section 182(2) of the Ordinance, followed by a penalty order.

Arguments

Petitioner argued that he issuance of the audit notice within 60 days violated section 114(6) of the Ordinance, which grants a taxpayer the right to revise their return within that period. Such premature action nullifies the statutory right to self-correct and undermines the self-assessment regime. Reliance was placed on the decision in CIR v. Zahid Jee Fabrics Ltd. (2021 PTD 1705).

Department argued that the petitioner never actually filed a revised return, even after issuance of the audit notice. Section 114(6A) should be read in conjunction with section 177, and provides the basis to proceed with audit notwithstanding the 60-day period. The provision under section 114(6) was thus not violated in substance

Decision

LHC held that:

- Section 114(6) is a substantive provision that confers a legal right to revise the return within 60 days of filing.
- Initiating audit under Section 177(1) before the expiry of that period infringes upon this right, rendering the provision redundant and defeating the purpose of voluntary compliance.
- Section 177 does not override Section 114(6), and both provisions must be interpreted harmoniously.
- Citing SC decision in Mesa Tech (2005 PTD 1933), the Court emphasized that statutory provisions must be construed together, and no word should be treated as surplus age or rendered meaningless.

Accordingly:

- The audit notice was declared unlawful and set aside.
- However, the Court held that the petitioner cannot now revise the return after expiry of the 60-day period without approval from the Commissioner under Section 114(6), which was not obtained.

9. TAX AUTHORITIES CANNOT RECOVER DISPUTED TAXES WHILE APPEALS ARE PENDING.

(2025) 131 TAX 643

LAHORE HIGH COURT

M/S IQBAL AVENUE CO-OPERATIVE HOUSING SOCIETY LIMITED

VS

FEDERATION OF PAKISTAN ETC.

APPLICABLE LAW: SECTION 131 OF THE INCOME TAX ORDINANCE, 2001

SECTION 10-A, 199, 199(1) AND 199(4) OF THE CONSTITUTION OF PAKISTAN, 1973

Brief Facts

The only grievance of the Petitioner (the taxpayer) is that the ATIR, Lahore has dismissed its stay application during pendency of its appeal.

Arguments

The petitioner contended that, under the Doctrine of Ripeness, the matter before the Tax Authorities was not ripe for enforcement, as the entire machinery and procedure for adjudication of disputes is provided before the appellate forum. It was further submitted Petitioner can only approach the High Court through a tax reference, and that it is settled law that recovery of a disputed amount cannot be made unless the matter has been decided by at least one independent forum outside the revenue hierarchy.

Decision

LHC granted temporary relief and:

- Directed the ATIR to decide the petitioner's appeal within two months.
- Restrained the Tax Authorities from taking any coercive action until the disposal of the appeal.
- Reiterated that disputed tax demands cannot be recovered while the appeal is pending for adjudicating.

Sales Tax Act, 1990

A. Reported Decisions

1. INCOME TAX RECORDS ALONE CANNOT CREATE SALES TAX LIABILITY WITHOUT CORROBORATING EVIDENCE OF TAXABLE SUPPLIES.

2025 PTD 811

APPELLATE TRIBUNAL INLAND REVENUE

M/S AMIR MAJEED KHAN NIAZI

VS

THE DEPUTY COMMISSIONER INLAND REVENUE

Applicable provisions: Section 3(1A), 11(2), 25(1) and 25(2) to the Sales Tax Act, 1990 (the Act)

Brief facts:

In the instant case, the appellant being a registered person was engaged in the supply of 'crushed stones' i.e., construction material, to Gwadar Infrastructure projects and Tribal Areas. The adjudicating officer observed that the registered person had concealed or suppressed gross sales of its supplies for the tax year 2020 and tax year 2021 which were declared as 'other revenue' in the income tax returns but not reflected in the corresponding sales tax returns.

The adjudicating officer, without properly assuming jurisdiction issued notice under section 11(2) of the ST Act for the tax periods July 2019 to June 2021, treating it as a cognizable case of concealment or suppression that resulted in short payment of sales tax at 17% along with further tax under section 3(1A) of the ST Act. Subsequently, the adjudicating officer passed an adverse order-in-original under section 11(2), creating a substantial sales tax liability coupled with imposition of default surcharge and penalty.

Being aggrieved, the registered person preferred appeal before the Commissioner (Appeals), who through impugned order modified the action of the adjudicating officer but still dismissed the appeal of the registered person. Being not satisfied with the treatment, the registered person came up with second appeal before Appellate Tribunal.

Decision:

The Tribunal decided the appeal in favour of the registered person and set aside the sales tax demand. The Tribunal held that the entire assessment was without lawful basis and could not be sustained. The adjudicating officer had created the sales tax demand solely on the basis of figures reported in the appellant's income tax returns, without any independent evidence to establish that these amounts represented taxable supplies under the ST Act.

The Tribunal observed that under section 3 of the Act, both a "taxable supply" and a "taxable activity" must co-exist to trigger sales tax liability, and the department failed to prove either element.

The Tribunal placed reliance on the decision of ATIR Lahore reported as 2013 PTD 2130 and judgment of Peshawar High Court in case of *Red Co. Enterprises* STR 93-P/2022, which held that income tax records alone cannot be used to create sales tax liability in the absence of corroborating material evidence.

Reference was also made to the judgment of Lahore High Court reported as 2008 PTD 103, emphasizing that tax cannot be levied on presumptions or extended by implication. Consequently, the Tribunal founded the departmental action to be without jurisdiction and contrary to settled law and annulled the orders of the lower authorities in their entirety.

2. AUTHORITIES CANNOT SHIFT LIABILITY TO DOWNSTREAM ENTITIES WITHOUT PROOF OF WRONGDOING.

2025 PTD 827

PESHAWAR HIGH COURT

THE COMMISSIONER INLAND REVENUE

VS

MS BASHER'S CNG FILLING STATION NOWSHERA AND ANOTHER

Applicable provisions: 3(46), 3B, 3(8), 47 and 47(5) to the ST Act, 1990.

Brief Facts:

M/s Basher's CNG Filling Station was issued a show-cause notice being alleged for short payment of sales tax. The department based its claim on an audit report conducted by the Director General Audit Inland Revenue Receipts (DGAIRR) and asserted that SNGPL had undercharged sales tax to CNG stations compared to the actual consumer rates, thereby creating a shortfall recoverable from the respondent. It was alleged that CNG stations collected higher prices from consumers but paid sales tax on a lower amount billed by SNGPL. Relying on this, the department invoked Section 3B of the ST Act, which deals with recovery of excess tax collected from consumers. The Assessing Officer passed an adverse order, which was initially upheld by the first appellate authority but later set aside by the Appellate Tribunal.

The Tribunal held that the DGAIRR audit report had no legal effect unless independently verified by an authorized officer under Section 30 of the Act and that there was no evidence to prove over-collection of tax by the CNG station. Being aggrieved, the department filed sales tax reference before the Peshawar High Court.

Decision:

The Court dismissed the reference and upheld the Tribunal's decision as lawful and decided the case in favor of the respondent. The Court held that the audit conducted by DGAIRR could not serve as the legal basis for assessment in the absence of an independent audit by a duly authorized officer under Section 30 of the ST Act.

The Court further observed that the application of Section 3B was unjustified, as there was no evidence to show that the respondent had collected excess sales tax from consumers or retained any such amount. The court affirmed that the special tax regime under Section 3(8) and SRO 236(I)/2014 governs the CNG sector, wherein SNGPL is solely responsible for charging and collecting sales tax based on OGRA-notified prices. CNG stations act merely as pass-through entities and do not have an independent liability.

3. DEPARTMENT MUST VERIFY NON-PAYMENT CLAIMS THROUGH RECORDS, NOT PRESUMPTIONS.

2025 PTD 833

APPELLATE TRIBUNAL INLAND REVENUE

M/S TRADE ZONE INTERNATIONAL

VS

THE COMMISSIONER INLAND REVENUE

Applicable provisions: Section 3 and 11 to the ST Act, 1990.

Brief Facts:

In the instant case, the appellant made supplies of taxable goods to government departments, including the Secondary Education Department during April 2016 to June 2016. Under the sales tax Withholding Rules, 1/5th of the sales tax was withheld by the recipient departments while the appellant was required to deposit the remaining 4/5th. The tax department confronted the appellant for non-deposit of such portion and raised tax demand under sections 3 and 11 of the ST Act.

The appellant argued that full tax was paid via sales tax returns and that the assessment order was passed without granting a proper opportunity of hearing or examining its records. Being aggrieved, the appellant filed appeal before the Commissioner (Appeals), however, original assessment order was upheld by the Commissioner (Appeals) which prompted the appellant to approach the Tribunal.

Decision:

The Tribunal remanded back the proceedings for fresh adjudication within 60 days with directions to grant the appellant proper opportunity of hearing and thoroughly examine all relevant tax records

The Tribunal found that the assessment order was passed without a hearing on the date of its issuance and without giving the appellant the required three opportunities under FBR Circular No. 7(2)/94. It was also asserted that the authorities failed to consider the appellant's returns and payment records and based their findings on assumptions. Accordingly, both the assessment and appellate orders were set aside.

4. APPELLANT FAILED TO PROVE GENUINE TRANSACTIONS DESPITE OPPORTUNITY.

2025 PTD 856

APPELLATE TRIBUNAL INLAND REVENUE

M/S POWERLINE TRADING COMPANY

VS

THE COMMISSIONER INLAND REVENUE

Applicable provisions: Section 2(14),2(37), 3, 6, 7, 8, 8A, 8(1)(ca), 9, 21, 22, 23, 26, and 73 to the ST Act, 1990.

Brief Facts:

In the instant case, a show-cause notice was issued for alleged violations of multiple provisions of the ST Act, including Sections 6, 7, 8, 8A, 9, 21, 22, 23, 26, and 73, and constituting tax fraud under Section 2(37) of the Act whereby the registered person filed only Annexure-C for the tax period of March 2021 showing supplies and output tax but failed to file the corresponding sales tax return or deposit any tax.

The authorities contended that the Annexure C uploaded by the company allowed buyers to claim illegal input tax based on these "flying invoices," even though no genuine supply took place. It was also contended that despite notices for personal hearings, the company only submitted a written reply and did not appear for proceedings. The order-in-original was passed and created tax demand along with default surcharge and 100% penalty.

The registered person being aggrieved filed first appeal before the Commissioner (Appeals) which was rejected. The registered person then filed a second appeal and stay application before the Tribunal.

Decision:

The Tribunal dismissed the appeal and stay application and upheld the original tax demand along-with the 100% penalty. The Tribunal further held that the act of filing Annexure C without tax deposit was deemed willful and classified as tax fraud under Section 2(37) of the Act.

The Tribunal observed that the non-filing of the sales tax return and non-deposit of tax were admitted and the only Annexure C was filed to facilitate illegal input tax claims by buyers. The taxpayer's contradictory justifications of system error versus inadvertence were rejected. The documents submitted were found to be mere paper transactions without any real tax payment or actual supplies.

5. CONDENSATE IS ZERO-RATED UNDER SRO 549/2008 AS IT FALLS UNDER PCT 2709.0000 AS PER WCO GUIDELINES.

2025 PTD 876

ISLAMABAD HIGH COURT

MOL PAKISTAN OIL AND GAS AND OTHERS

VS

THE FEDERAL BOARD OF REVENUE

Applicable provisions: Section 4(c) and 47 to the ST Act, 1990.

Brief Facts:

MOL Pakistan Oil and Gas and others were engaged in the exploration, production, and sale of petroleum products including 'condensate'. However, they did not charge sales tax on the supply of condensate in accordance with SRO 549(I)/2008 dated June 11, 2008 which provides zero-rating for petroleum crude oil under PCT Heading 2709.0000 for "import and supplies thereof."

Tax authorities disallowed this treatment and asserted that condensate is distinct from crude oil due to differences in origin, physical properties, and production methods, and hence not covered under the said SRO. The assessing officer held condensate as a separate petroleum product which is not eligible for zero-rating. However, the Commissioner Appeals disagreed and ruled in favor of the taxpayer referencing legislative definitions that include condensate within the scope of petroleum.

The Appellate Tribunal overturned the decision of Commissioner Appeals and emphasized on technical distinctions by classifying condensate as LNG (PCT 2711). The Tribunal concluded that SRO 549's reference to crude oil excluded condensate

and further held that zero-rating was conditional upon importation. Being aggrieved, the taxpayers challenged these adverse decisions before the Islamabad High Court.

Decision:

The Islamabad High Court allowed the references in favor of the taxpayers and held that condensate qualifies as crude oil under PCT Heading 2709.0000 as interpreted by the World Customs Organization (WCO) Explanatory Notes, which are recognized under Pakistani Customs Law as an authoritative source.

The Court found that the Tribunal erred by ignoring this classification and instead relied on scientifically flawed and legally untenable distinctions between crude oil and condensate. The Court held that mention of PCT heading in SRO 549 was not redundant and must be read as an integral reference to the nature of the product covered. Since the WCO explicitly includes gas condensates as crude oil within PCT 2709.0000, and SRO 549 refers to that heading, condensate is entitled to zero-rating.

The Court rejected Tribunal's misclassification of condensate as LNG and criticized its pseudo-scientific reasoning. Further, the phrase "import and supplies" was interpreted disjunctively, in line with the Lahore High Court's decision in *Sapphire Dairies*, meaning that domestic supply alone qualifies for zero-rating without requiring importation.

6. TIME LIMITS IN ORIGINAL ADJUDICATION PROCEEDINGS UNDER SALES TAX AND SIMILAR STATUTES ARE MANDATORY, NOT DIRECTORY.

2025 TAX 523

SUPREME COURT OF PAKISTAN

M/S. WAK LIMITED MULTAN ROAD

VS

THE FEDERAL BOARD OF REVENUE

Applicable provisions: Section 11, 44(4), 11(5), 11A, 11B, 11C, 11D, 11E, 11F, 11G, 36, 45 and 74 to the ST Act, 1990.

Brief Facts:

A **larger bench** of the **Supreme Court of Pakistan** was constituted to **re-examine the correctness** of a previous **three-member bench decision** in the case of **Collector of Sales Tax, Gujranwala v. Super Asia Mohammad Din (2017 SCMR 1427)** as the principles enunciated in Super Asia case came up for application sometime thereafter in a case of Wak Ltd. reported as (2018 SCMR 1474) before another three member Bench which expressed certain reservations with the findings recorded in Super Asia's case**.**

The case involved the interpretation of time limitation provisions in the Sales Tax Act, 1990, particularly Sections 11(5) and its predecessors which prescribe strict deadlines for issuing orders after a show cause notice.

The key legal issue was whether these time limits are mandatory (binding and must be adhered to strictly) or directory (permissive and flexible). The earlier Supreme Court judgment in Super Asia had held these provisions to be mandatory stating that orders issued beyond these periods were invalid unless lawful extensions were granted.

Some subsequent cases such as Wak Ltd. expressed reservations arguing that the provisions might be directory because they lacked penal consequences for breaches and could enable procedural manipulation.

The debate extended to Section 74 which allows the FBR to condone delays and whether judicially imposed time limits such as a six-month maximum extension were appropriate. The amendments in 2024 retained similar provisions reinforcing the original interpretation and legislative intent.

Decision:

The Larger Bench reaffirmed and confirmed the Super Asia judgment and held that the time-limitation provisions in the relevant statutes are mandatory. It clarified that any assessment or order-in-original made beyond these prescribed periods without lawful extension is invalid.

The Court emphasized that the language used in the statutes "shall" and "in no case" clearly indicates legislative intent for these limits to be strictly observed. It also affirmed that extensions under section 74

are limited and must be exercised reasonably with a maximum period of six months to prevent indefinite delays.

The judgment addressed and dismissed the reservations expressed in the Wak Ltd. case, supporting the view that procedural time limits for original adjudication are inherently mandatory to ensure timely resolution and prevent abuse.

The Court concluded that the legislative amendments in 2024 did not alter this interpretation. Review petitions against Super Asia were also dismissed affirming that the principles laid down remain correct and binding.

7. EXEMPTION UNDER SIXTH SCHEDULE IS AUTOMATIC IF INPUT TAX ADJUSTMENT IS BARRED BY SRO.

2025 TAX 579

ISLAMABAD HIGH COURT

M/S. PAK TELECOM MOBILE LIMITED

VS

THE COMMISSIONER INLAND REVENUE

Applicable provisions: Section 2(33), 2(41), 3(1), 3(1)(a), 2(41), 8(1), 13 and 33(5) to the ST Act, 1990.

Brief Facts:

Pak Telecom Mobile Limited was issued a show-cause notice for failing to charge sales tax on disposal of fixed assets and insurance proceeds. The tax department treated the insurance compensation as a "supply" under section 3(1)(a) of the ST Act asserting that transfer of rights to damaged goods to the insurer constituted taxable supply.

It was also held in the department's order that proceeds from sale of fixed assets like vehicles, building materials, and electrical appliances were liable to sales tax which rejects the registered person's claim of exemption under SRO 490(I)/2004 dated June 12, 2004 and the Sixth Schedule to the ST Act. Additionally, penalties and default surcharge were imposed under sections 33(5) and 34.

The registered person contested the demand and penalties before the appellate forum, which upheld the tax officer's orders without proper reasoning. The matter was then referred to the Islamabad High Court.

Decision:

The Court decided the case in favor of the registered person and set aside the orders of the lower forums and held the registered person entitled to refund or adjustment of any amount paid.

The Court held that insurance proceeds are not taxable under the Sales Tax Act as they constitute "actionable claims" excluded from the definition of "goods" under section 2(12), and receipt of such proceeds does not amount to "supply" under section 2(33). It ruled that even where damaged goods are transferred to the insurer, the insurance contract remains one of indemnification and not sale.

Regarding fixed assets, the Court found that vehicles, building materials, and other items listed in SRO 490 fall within the definition of fixed assets in commercial parlance and are exempt under Serial No. 6 of Table 2 of the Sixth Schedule to the ST Act if input tax adjustment is barred. It was also held that exemption cannot be denied merely because the registered person failed to produce documents to prove non-availment of input tax. The imposition of penalty and surcharge was declared unlawful as no valid tax liability or mens rea was established.

Balochistan Sales Tax on Services Act, 2015

A. Reported Decision:

1. **TAX MUST BE PAID TO THE PROVINCE WHERE SERVICES ARE CONSUMED, NOT WHERE PAYMENTS ORIGINATE.**

   2025 PTD 842

   BALOCHISTAN SALES TAX ON SERVICES APPELLATE TRIBUNAL

   BONANZA GARMENT INDUSTRIES (PRIVATE) LIMITED

   VS

   THE ASSISTANT COMMISSIONER, QUETTA

   Applicable provisions: 2(115)(b), 2(139), 4, 17, 48, and 52(6) of Balochistan Sales Tax on Services Act 2015.

   Brief Facts:

   The appellant, Bonanza Garment Industries (Pvt.) Ltd. having its registered office in Karachi, availed billboard advertising services in Balochistan during tax years 2018–19 and 2019–20. The Balochistan Revenue Authority (BRA) alleged that the appellant withheld sales tax on these services but failed to deposit it with BRA, instead paying it to the Sindh Revenue Board (SRB).

   BRA issued ex-parte orders under Section 52(6) and 48 of the Balochistan Sales Tax on Services Act, 2015 and created demands for the respective years. The appellant argued that since payments were made from Karachi therefore tax was justifiably paid to SRB and moreover, section 52(6) of the Act inserted in 2019 could not be applied retrospectively to the 2018-19 period. Being aggrieved, the appellant filed appeal before the Commissioner (Appeals), BRA which were dismissed, and both original and appellate orders were challenged before the Appellate Tribunal.

   Decision:

   The Tribunal set aside both the Order-in-Original and the Order-in-Appeal due to procedural lapses, passing non-speaking orders, and failure to examine critical legal and factual issues.

   The case was remanded to the Assistant Commissioner, BRA, with directions to reconsider whether the appellant had a taxable presence in Balochistan, whether the retroactive application of Section 52(6) was justified for 2018–19, and to assess the registration and return status of the service providers.

   The Tribunal emphasized the need to avoid double taxation and held that tax must be paid in the province where services are consumed. The BRA was instructed to issue a speaking order after providing a proper hearing to the appellant within the specified timeline.

2. **SALES TAX ON SERVICES APPLIES TO THE FULL CONTRACT AMOUNT (GOODS + SERVICES), NOT JUST THE SERVICE PORTION.**

   2025 TAX 657

   BALOCHISTAN HIGH COURT

   M/S CONSTRUCTOR ASSOCIATION OF PAKISTAN AND OTHERS

   VS

   GOVERNMENT OF BALOCHISTAN THROUGH CHIEF SECRETARY AND OTHERS

   Applicable provisions: 2(14), 2(86), and 6 of Balochistan Sales Tax on Services Act 2015.

   Brief Facts:

   The petitioners are registered with Pakistan Engineering Council (PEC) and are contractor by profession engaged in construction and works contracts with various departments in Balochistan.

The Petitioners have challenged the applicability of Balochistan Sales Tax on Services (BSTS) under the BSTS Act, 2015. They specifically contested Notification No.FD.SO(MPR)1-46/BST/20203714-48 dated May 4, 2020 which directed withholding of BSTS at 6% on construction services.

The petitioners contended that:

- the notification was ultra vires to the Act,
- BSTS should be charged only on the service portion of composite contracts,
- the Government of Balochistan, being the end-user, should bear the burden of BSTS,
- the applicable rate of 6% was higher than that applicable in other provinces, and
- BSTS should not be levied on running bills.

Decision:

The Court dismissed the petitions and held that the impugned notification merely clarified the provisions of the BSTS Act and was not ultra vires. It ruled that construction contracts are composite in nature and cannot be bifurcated into goods and services for taxation purposes. BSTS is lawfully applicable on the entire contract value, and contractors have the option to choose between 15% with input tax adjustment or 6% (later 4%) without adjustment.

The Government of Balochistan is not the end consumer but a withholding agent; the true end consumer is the general public who ultimately bears the tax burden. Provincial tax rate differences reflect regional fiscal autonomy and do not amount to discrimination. The Court also held that BSTS applies equally to running bills. Accordingly, all challenges were found to be misconceived and the petitions were dismissed.

3. WHILE PROCEDURAL STATUTES CAN SOMETIMES BE APPLIED RETROSPECTIVELY, THEY SHOULD NOT INFRINGE ON SUBSTANTIVE OR VESTED RIGHTS WITHOUT CLEAR LEGISLATIVE INTENT.

2025 TAX 666

BALOCHISTAN HIGH COURT

M/S NOOR UL HAQ THROUGH ABDUL SAMAD

VS

GOVERNMENT OF BALOCHISTAN THROUGH CHIEF SECRETARY AND OTHERS

Applicable provisions: 14, and 53 of Balochistan Revenue Authority Act, 2015 and 3(1) and 52(6) of Balochistan Sales Tax on Services Act, 2015.

Brief Facts:

The petitioner is associated with construction work and is registered with the Pakistan Engineering Counsel (PEC). The petitioner was declared as lowest successful bidder for the Construction of water conveyance system with allied structures of Shadi Kaur Dam Project at Pasni, Gawadar in 2009 and the awarded work was subsequently completed by April 2015.

Although the project was finalized before the enactment of the Balochistan Sales Tax on Services Act, 2015, part payments were made during 2016-17. In 2019, the Project Director issued a recovery notice acting upon the directions of Director General Audit regarding non-deduction of Balochistan Sales Tax on Services (BSTS).

Being aggrieved, the petitioner challenged the recovery notice and filed instant petition arguing that:

- the Project Director was not legally authorized to initiate recovery proceedings, and
- the sales tax law could not be retrospectively applied to a project that had been awarded and completed before the law came into force.

Decision:

The Court decided the petition in favor of the petitioner and held that the Project Director lacked jurisdiction to initiate recovery under the Balochistan Revenue Authority Act 2015 (BRAA), as Sections 14 and 53 of BRAA clearly confer such authority exclusively upon officers of the Balochistan Revenue Authority.

The Court further noted that critical enforcement provisions, including Section 14(3) and Section 52(6), were introduced through the Finance Act, 2019 and could not be applied retrospectively. Additionally, the BSTS Withholding Rules, notified in June 2018 and effective from July 2018 were not applicable to payments made in 2016–17.

The Court emphasized that procedural laws may be applied retrospectively only if they do not disturb vested rights or cause injustice. Since the impugned notice was issued without citing any lawful authority and relied solely on audit observations, it was declared unlawful and void ab initio.

Punjab Sales Tax on Services Act, 2012

A. Reported Decisions:

1. **SECTION 14 OF PUNJAB SALES TAX ON SERVICES ACT, 2012 IS THE CORRECT PROVISION FOR PROCEEDINGS AGAINST WITHHOLDING AGENTS, NOT SECTION 52.**

   2025 PTD 864

   LAHORE HIGH COURT

   FAUJI CEMENT COMPANY LIMITED

   VS

   GOVT. OF PUNJAB ETC.

   Applicable provisions: 14, 14A, 14(2), 16d, 52, 52(1), and 52(3) of Punjab Sales Tax on Services Act 2012.

   Brief Facts:

   The petitioner challenged show cause notice issued by the Punjab Revenue Authority (PRA) under Section 52 of the Punjab Sales Tax on Services Act, 2012. The company contended that it is merely a withholding agent and not a taxpayer and thus any proceedings should have been initiated under Section 14 of the Act which governs withholding agents.

   The notice was impugned as being issued without prior notice under Section 52(1) thereby directly invoking Section 52(3) related to recovery which violated procedural due process.

   The petitioner argued that this was contrary to Articles 4 and 10-A of the Constitution which guarantee fair treatment and due process. The petitioner placed reliance on multiple precedents in support including Rahat Café vs Govt. of Punjab's case reported as (2024 PTD 898) which emphasized that statutory language must be applied as written and that special provisions applicable to withholding agents must be invoked prior to applying general penalty sections.

   Decision:

   The Court has held that the show cause notice issued under Section 52 of the Act without fulfilling the preconditions of Section 14 was without lawful authority. Since the petitioner is a withholding agent and not a taxpayer, proceedings should have commenced under Section 14 which falls within the scope-defining Chapter II of the Act. The notice violated constitutional protections under Articles 4 and 10-A.

   Consequently, the notice was set aside, and the matter was remanded to the Additional Commissioner, PRA Rawalpindi with the directions that a copy of the writ petition be remitted to him which is to be treated as a representation of the petitioner. The Court further held that decision is to be rendered strictly as per provisions of Sections 14 and 14A through a speaking order within four weeks after affording proper hearing to the petitioner.

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About Yousuf Adil

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